

RECEIVED
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE MAR 24 2005

Applicant(s): H. MANO, et al

Serial No.: 09/625,542

Filed: July 25, 2000

For: MULTI-TONE DISPLAY DEVICE

**RENEWED PETITION TO WITHDRAW ERRONEOUS HOLDING OF
ABANDONMENT AND REQUEST FOR RECONSIDERATION**

MS Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

March 24, 2005

Sir:

Applicants hereby renews its Petition to withdraw erroneous holding of abandonment previously submitted on September 16, 2003. Applicants as of yet have not received any response to the September 16, 2003 Petition.

Attached is a copy of the September 16, 2003 Petition and a copy of the Postcard Receipt evidencing its filing in the United States Patent and Trademark Office on September 16, 2003.

As set forth in the September 16, 2003 Petition, Applicants learned after receiving an October 22, 2002 Supplemental Notice of Allowability, that a Notice of Allowance was issued on March 15, 2002 and that a Notice of Abandonment dated September 13, 2002 in connection with the above-identified application had been issued. The Notice of Abandonment indicated that the application was abandoned in view of "Applicants' failure to pay the

required Issue Fee within the statutory period of three (3) months from the mailing date of March 15, 2002 of the Notice of Allowance".

Applicants note that the Notice of Abandonment was premature in that it was issued on September 13, 2002 rather than after September 15, 2002 the date upon which the Issue Fee was due and that the Supplemental Notice of Allowability was late in that it was issued well after September 15, 2002. Thus, the Notice of Abandonment appears to be irregular and most likely improper on a procedural basis.

Applicants further note that the March 15, 2002 Notice of Allowance and the September 13, 2002 Notice of Abandonment were mailed to an incorrect address, namely 191 Pennsylvania Avenue, N.W., Suite 600, Washington, DC 20006 not Applicants' then current address of 1300 North 17th Street, Suite 1800, Arlington, VA 22209. Applicants' Attorney never had an office at 191 Pennsylvania Ave, N.W., Suite 600, Washington, D.C. 20006. Applicants' Attorney did however at one time until 1994 have an office at 1919 Pennsylvania Ave. N.W., Suite 600, Washington, DC 20006. Copies of the March 15, 2002 Notice of Allowance and the September 13, 2002 Notice of Abandonment indicating the incorrect address are attached. Thus, the Notice of Allowance and Notice of Abandonment should be withdrawn since they were mailed to an incorrect address.

It should be noted that Applicants Attorney's current address is now MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C., 1800 Diagonal Road, Suite 370, Alexandria, VA 22314 (Customer No. 24956). All further

correspondence should be sent to said address. A Change of Correspondence Address is being filed on even date.

Applicants submit that even if the March 15, 2002 Notice of Allowance was an attempt to mail the March 15, 2002 Notice of Allowance to Applicants' Attorney previous address, then the March 15, 2002 Notice of Allowance would never have reached Applicants' Attorney at his previous address nor his then current address of 1300 North 17th Street, Suite 1800, Arlington, VA 22209. Applicants note that the October 22, 2002 Supplemental Notice of Allowability was sent to Applicants' Attorney's then current address.

Applicants are puzzled as to why such October 22, 2002 Supplemental Notice of Allowability was mailed to Applicants' Attorney's then current address, whereas the March 15, 2002 Notice of Allowance was mailed to the incorrect address.

After numerous discussions with the United States Patent and Trademark Office regarding the present application, Applicants filed on October 25, 2002 a Change of Correspondence Address to urge the United States Patent and Trademark Office to update their records to correspond to the mailing of address of 1300 North 17th Street, Suite 1800, Arlington, VA 22209 as per the Customer No. 020457 and as per the Utility Patent Application Transmittal filed on July 25, 2000.

Applicants submit that for the reasons as discussed herein the original mailing of the March 15, 2002 Notice of Allowance has never been received at the then current address of the offices of the undersigned Attorney nor was it ever received at the previous address of the previous offices of the

undersigned attorney. Accordingly, pursuant to MPEP §711.03(c) and the Commissioner's Notice in 1156 OG 53 (copy attached herewith), it is respectfully petitioned that the holding of abandonment be withdrawn and that a new period for responding to the Notice of Allowance be reset so as to allow payment of the Issue Fee filed concurrently herewith, i.e., based on the rational set forth in Delgar, Inc. v. Schuyler, 172 USPQ 513 (DOC 1971). Authorization is hereby given to charge the Issue Fee to the deposit account of MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. Deposit Account No. 50-1417 (500.28503CC5). More particularly, as reasons for granting of such request, the following facts are respectfully submitted.

In the previous offices of the undersigned attorney, all mail which is received from the U.S. Patent and Trademark Office (USPTO) is given directly to a docketing department. Responsive to receipt of such mail, as a first safeguard, the docketing department maintains a computer database which stores information relating to the filing of papers in the USPTO, receipt of papers from the USPTO, and due dates for responding to papers received from the USPTO. The data in the computer database is backed up on a magnetic tape at the end of each work day.

Attached hereto is a printout of pertinent data in the computer database for the present application as it existed on or about the maximally extended date. The attached printout shows data fields entitled "Action", "Base Due" and "Final", which will be referred to below.

When a paper, which requires a response is received from the USPTO, the docketing department enters the mailing date of such paper in the "Base" data field.

For the Notice of Allowance mailed March 15, 2002, the expiration date of a non-extendable statutory period for paying the Issue Fee was three months from the Notice of Allowance, i.e., June 15, 2002. Therefore, if the Notice of Allowance mailed March 15, 2002, had been received in the previous offices of the undersigned attorney, then the docketing department would have added "Issue Fee" to the "Action" field; entered the date "June 15, 2002" in the corresponding "Due" field and the date "June 15, 2002" in the "Final" field. However, as can be seen from the attached printout, this was not done indicating that the Notice of Allowance mailed March 15, 2002, was never received in the then current office of the undersigned attorney.

Furthermore, as a second safety cross check against the computer database, the docketing department maintains a handwritten master docket book which has one page for each day of the year.

After data relating to a USPTO paper has been entered into the computer database, the docketing department handwrites data relating to such paper into the master docket book on the page corresponding to the expiration date of a maximally-extended statutory period for response to the paper. As discussed above, for the Notice of Allowance dated March 15, 2002, the expiration date of a maximally-extended statutory period for response was June 15, 2002, for Payment of the Issue Fee.

Attached hereto is a copy of the page of the master docket book for June 15, 2002.

When a Notice of Allowance is received, the docketing department enters the following information in the master docket book on the page corresponding to the expiration date of the maximally-extended statutory periods for response: the docket number of the application to which the USPTO action pertains, the last name of the first-named inventor of the application, the serial number of the application, the notation "Issue Fee", and the initials of the attorney to whom the application is assigned.

Therefore, if the Notice of Allowance dated March 15, 2002 had been received in the offices of the undersigned attorneys, the attached copy of the page of the master docket book for June 15, 2002 would show an entry with the following data: docket number 500.28503CC5, the last name MANO, serial number 09/625,542, the notation "Issue Fee", and the initials "CIB". However, as can be seen from the attached copy of the page of the master docket book for June 15, 2002, such an entry does not appear. It is respectfully submitted that the absence of corresponding entries on such master docket book pages further evidences the fact that the Notice of Allowance mailed March 15, 2002 was never received in the then current office of the undersigned attorney.

As evidence that the docketing procedures described above were followed at the time the Notice of Allowance was mailed, it is noted that the attached copy of the page of the master docket book for June 15, 2002 includes entries corresponding to ****Thirty-two (32)**** applications other than

the present application. Further, it is submitted that the entries on the page of the master docket book for June 15, 2002, as discussed above, indicate that the docketing procedures were followed for **Thirty-two (32)** applications other than the present application about the time the Notice of Allowance mailed March 15, 2002 should have been received.

As noted above, the then current correspondence address of the undersigned attorney was 1300 N. Seventeenth Street, Suite 1800, Arlington, VA 22209. Further, it is noted that the present application was filed as a continuation of application Serial No. 09/188,901, filed November 10, 1998, now U.S. Patent No. 6,191,765 and that at the time of filing such continuation application the Utility Patent Application Transmittal at "Item 17" indicated Applicants then current correspondence address as Customer No. as 020457. Thus, the United States Patent and Trademark Office was required to use such Customer Number as the then correspondence address of Applicants. Such was not done in this case.

Applicants submit that being that the Customer No. 020457 was indicated on the transmittal at item 17, the United States Patent and Trademark Office was properly informed of the then current mailing address of Applicants' Attorney, the undersigned. Thus, the mailing of the Notice of Allowance and Notice of Abandonment to the incorrect address was improper.

Applicants further submit that no correspondence from the United States Patent and Trademark Office prior to the October 22, 2002 Supplemental Notice of Allowability has ever been received for the present application, including, for example, the Filing Receipt. Accordingly, it appears

that the non-receipt of the March 15, 2002 Notice of Allowance may have been due to the failure of the United States Patent and Trademark Office to properly enter Applicants' then current Customer No. 020457 into their database for the present application. Proper entry of said Customer Number would have required all correspondence to be mailed to the undersigned attorney at his then current address.

For the reasons discussed above, it is submitted that the Notice of Allowance mailed on March 15, 2002 has never been received at the then current address of the undersigned attorney nor was it ever received at the previous address of the previous offices of the undersigned attorney.

Accordingly, pursuant to MPEP §711.02, it is respectfully petitioned that the holding of abandonment be withdrawn and that a new period for responding to the Notice of Allowance be reset so as to allow payment of the Issue Fee filed concurrently herewith, i.e., based on the rational set forth in Delgar, Inc. v. Schuyler, 172 USPQ 513 (DOC 1971).

The undersigned declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

To the extent necessary, the applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. Deposit Account No. 50-1417 (500.28503CC5).

Respectfully submitted,

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.



Carl I. Brundidge
Registration No. 29,621

CIB/jdc
(703) 684-1120

Attachments:

Withdrawing of Holding of Abandonment
Computer Docket Sheet
June 15, 2002 Master docket page
Part B – Issue Fee Transmittal
Change of Correspondence Address – Customer No. 24956

COPY

Patent Dkt. No. 500.28503CCS Attorney Initials (CIB)
Application No. 09/625,542 Filing Date July 25, 2000
Applicant(s) H. MANO, et al
Papers Filed Herewith on September 16, 2003

Receipt is hereby acknowledged of the papers filed as indicated by the checked items in connection with the above-identified application:

New Application Transmittal Form Credit Card Payment Form
 Pages of Specification (claims) Fees \$ _____
 Sheets of Drawings Amendment
 Declaration (pages) Response to Office Action
 Fee Transmittal Form *Sept 18 2003* Petition for Extension of Time (mos.)
 Claim for Priority Information Disclosure Statement
 Priority Documents PTO-1449 Copies of References
 Assignment Papers Revised Drawings (sheets)
 Issue Fee Transmittal Notice of Appeal
 Other Petition to Withdraw Erroneous Holding of
Abandonment and Request for Consideration with
attachments

500.28503CC5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: H. MANO, et al

Serial No.: 09/625,542

Filed: July 25, 2000

For: MULTI-TONE DISPLAY DEVICE

Group: 2673

Examiner: A. Mengistu

COPY

PETITION TO WITHDRAW ERRONEOUS HOLDING
OF ABANDONMENT AND REQUEST FOR RECONSIDERATION

MS Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

September 16, 2003

Sir:

Applicants have learned after receiving an October 22, 2002 Supplemental Notice of Allowability, that a Notice of Allowance was issued on March 15, 2002 and that a Notice of Abandonment dated September 13, 2002 in connection with the above-identified application had been issued. The Notice of Abandonment indicated that the application is abandoned in view of "Applicants' failure to pay the required Issue Fee within the statutory period of three (3) months from the mailing date of March 15, 2002 of the Notice of Allowance".

Applicants note that the Notice of Abandonment was premature in that it was issued on September 13, 2002 rather than September 15, 2002 and that the Supplemental Notice of Allowability was late in that it was issued well after September 15, 2002 the date the Issue Fee was due.

Applicants further note that the March 15, 2002 Notice of Allowance and the Notice of Abandonment were mailed to an incorrect address, namely 191 Pennsylvania Avenue, N.W., Suite 600, Washington, DC 20006 not Applicants' Attorneys' current address of 1300 North 17th Street, Suite 1800, Arlington, VA 22209. Applicants' Attorneys' never had an office at 191 Pennsylvania Ave, N.W., Suite 600, Washington, D.C. 20006. Applicants' Attorneys' did however have an office at 1919 Pennsylvania Ave, N.W., Suite 600, Washington, DC 20006. Copies of the March 15, 2002 Notice of Allowance and the September 13, 2002 Notice of Abandonment indicating the incorrect address are attached.

Applicants submit that even if the March 15, 2002 Notice of Allowance was an attempt to mail the March 15, 2002 Notice of Allowance to Applicants' Attorneys' previous address, then the March 15, 2002 Notice of Allowance would never have reached Applicants' Attorneys' at their previous address nor their current address of 1300 North 17th Street, Suite 1800, Arlington, VA 22209.

Applicants note that the October 22, 2002 Supplemental Notice of Allowability was sent to Applicants current address and is puzzled as to why such Supplemental Notice of Allowability was mailed to Applicants current address when the March 15, 2002 Notice of Allowance was mailed to an incorrect address. After numerous discussions with the United States Patent and Trademark Office regarding the present application Applicants filed on October 25, 2002 a Change of Correspondence Address to urge the United States Patent and Trademark Office update their records to correspond to the previously indicated mailing of address of 1300 North 17th Street, Suite 1800, Arlington, VA 22209 as per the Customer No. 020457 as per the Utility Patent Application Transmittal filed on July

25, 2000. However, such Change of Correspondence Address was filed after the mailing date of the October 22, 2002 Supplemental Notice of Allowability.

Applicants submit that for the reasons discussed below, that the original mailing of the March 15, 2002 Notice of Allowance was never received at the current address of the current offices of the undersigned Attorneys nor was it ever received at the previous address of the previous offices of the undersigned attorneys. Accordingly, pursuant to MPEP §711.03(c) and the Commissioner's Notice in 1156 OG 53 (copy attached herewith), it is respectfully petitioned that the holding of abandonment be withdrawn and that a new period for responding to the Notice of Allowance be reset so as to allow payment of the Issue Fee filed concurrently herewith, i.e., based on the rational set forth in Delgar, Inc. v. Schuyler, 172 USPQ 513 (DDC 1971). Authorization is hereby given to charge the Issue Fee to the deposit account of Antonelli, Terry, Stout & Kraus Account No. 01-2135 (500.28503CC5). More particularly, as reasons for granting of such request, the following facts are respectfully submitted.

In the offices of the undersigned attorneys, all mail which is received from the U.S. Patent and Trademark Office (USPTO) is given directly to a docketing department. Responsive to receipt of such mail, as a first safeguard, the docketing department maintains a computer database which stores information relating to the filing of papers in the USPTO, receipt of papers from the USPTO, and due dates for responding to papers received from the USPTO. The data in the computer database is backed up on a magnetic tape at the end of each work day.

Attached hereto is a printout of pertinent data in the computer database for the present application as it existed on or about the maximally extended date. The attached printout shows data fields entitled "Action", "Base Due" and "Final", which will be referred to below.

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above, for the Notice of Allowance dated March 15, 2002, the expiration date of a maximally-extended statutory period for response was June 15, 2002, for Payment of the Issue Fee.

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Therefore, if the Notice of Allowance dated March 15, 2002 had been received in the offices of the undersigned attorneys, the attached copy of the page of the master docket book for June 15, 2002 would show an entry with the following data: docket number 500.28503CC5, the last name MANO, serial number 09/625,542, the notation "Issue Fee", and the initials "CIB". However, as can be seen from the attached copy of the page of the master docket book for June 15, 2002, such an entry does not appear. It is respectfully submitted that the absence of corresponding entries on such master docket book pages further evidences the fact that the Notice of Allowance mailed March 15, 2002 was never received in the offices of the undersigned attorneys.

As evidence that the docketing procedures described above were followed at the time the Notice of Allowance was mailed, it is noted that the attached copy

of the page of the master docket book for June 15, 2002 includes entries corresponding to **Thirty-two (32)** applications other than the present application. Further, it is submitted that the entries on the page of the master docket book for June 15, 2002, as discussed above, indicate that the docketing procedures were followed for **Thirty-two (32)** applications other than the present application about the time the Notice of Allowance mailed March 15, 2002 should have been received.

As noted above, the correspondence address of the undersigned attorneys is 1300 N. Seventeenth Street, Suite 1800, Arlington, VA 22209. Applicants also submit that the present application was filed as a continuation of application Serial No. 09/188,901, filed November 10, 1998, now U.S. Patent No. 6,191,765 and that at the time of filing such continuation application the Utility Patent Application Transmittal at "Item 17" indicated Applicants correspondence address Customer No. as 020457. The United States Patent and Trademark Office is required to use such Customer No. as an indication of Applicants address. Such was not done in this case.

Applicants submit that being that the Customer No. 020457 was indicated on the transmittal at item 17, the United States Patent and Trademark Office was properly informed of the current mailing address of Applicants' Attorneys, the undersigned. Thus, the mailing of the Notice of Allowance and Notice of Abandonment were improperly mailed by the United States Patent and Trademark Office to an incorrect address.

Applicants further submit that no correspondence from the United States Patent and Trademark Office prior to the October 22, 2002 Supplemental Notice

of Allowability was ever received for the present application, namely the Filing Receipt. Accordingly, it appears that the non-receipt of the March 15, 2002 Notice of Allowance may have been due to the failure of the United States Patent and Trademark Office to properly enter Applicants Customer No. 020457 into their database for the present application, thereby requiring all correspondence to be mailed to the undersigned attorneys current address.

For the reasons discussed above, it is submitted that the Notice of Allowance mailed on March 15, 2002 was never received at the current address of the current offices of the undersigned attorneys nor was it ever received at the previous address of the previous offices of the undersigned attorneys.

Accordingly, pursuant to MPEP §711.02, it is respectfully petitioned that the holding of abandonment be withdrawn and that a new period for responding to the Notice of Allowance be reset so as to allow payment of the Issue Fee filed concurrently herewith, i.e., based on the rational set forth in Delgar, Inc. v. Schuyler, 172 USPQ 513 (DDC 1971).

The undersigned declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (Case No. 500.28503CC5) and please credit any excess fees to such deposit account.

Respectfully submitted,



Carl I. Brundidge
Registration No. 29,621
ANTONELLI, TERRY, STOUT & KRAUS, LLP

CIB/jdc
(703) 312-6600

Attachments:

Withdrawing the Holding of Abandonment
Computer Docket Sheet
June 15, 2002 Master docket page
Part B - Issue Fee Transmittal

Withdrawing the Holding of Abandonment

(74)

Withdrawing the Holding of Abandonment
When Office Actions Are Not Received

The purpose of this notice is to announce a practice that will minimize costs and burdens to the practitioner and the Office when an application has become abandoned due to a failure to receive an Office action.

A petition to withdraw the holding of abandonment in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513 (D.D.C. 1971) is burdensome to the practitioner since the practitioner must overcome a strong presumption that an Office action duly addressed and indicated as mailed was timely delivered to the addressee. To overcome this presumption, a practitioner is currently required to submit a persuasive showing that would permit the Office to conclude that the Office action was not received. Accordingly, evidence which is typically required includes: copies of records which would disclose the receipt of other correspondence mailed from the Patent and Trademark Office on or about the mail date of the non-received Office action, but fail to disclose receipt of the Office action mailed that date; copies of records on which the Office action would have been entered had it been received (e.g., a copy of the outside of the file jacket maintained by the practitioner); and verified statements from persons who would have handled the Office action (e.g., mail clerks, docket clerks, secretary, etc.).

In order to minimize costs and burdens to the practitioner and the Office when an application has become abandoned due to a failure to receive an Office action, the Office is modifying the showing required to make a petition to withdraw the holding of abandonment grantable. The showing required to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail, e.g., if the practitioner has a history of not receiving Office actions. Two additional procedures are available for reviving an application that has become abandoned due a failure to respond to an Office Action: (1) a petition based on unintentional abandonment or delay; and (2) a petition based on unavoidable delay. See Manual of Patent Examining Procedure 711.03(c).

Oct. 25, 1993

CHARLES E. VAN HORN
Patent Policy and Projects Administrator
Office of the Assistant Commissioner
for Patents

[1156 OG 53]

MAR-24-05 06:51AM FROM- MATTINGLY, STANGER, MALUR & BRUNDIDGE										+ 703 684 1157	T-159	P.023/025	F-917																																																																																																		
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PRIOR APPLICATIONS												
REFERENCE#	CNTRY	SERIAL#	FILED	TITLE / DESCRIPTIO								TYPE
500.28503CC4	US	09/188,901	11/10/1998	MULTI-TONE DISPLAY DEVICE								APPL

COPY

MAR-24-05

06:51AM

FROM- MATTINGLY, STANGER, MALUR & BRUNDIDGE

+ 703 684 1157

T-159 P.024/025 F-917

JUNE

15

SATURDAY

COPY

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 503. 34230X00 5849670 main file WIS
 523. 34159VX1 5849861 main file WIS /
 501. 34425X00 5850219 main file Cdy /
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 501. 39565X00 Furano 803148 Passenger 8/13
 " " " Puppers 8/13
 1117. 40455X00 Bersert 1059515 Passenger CIB
 501. 38459X00 Asano 549085 Passenger CIB 6/13
 501. 39450X00 Nakayama 777544 Passenger 8/13
 " " " Puppers 8/13
 500. 39772X00 Nakamura 703806 Passenger
 " " " 1 Jam phone 5/3
 500. 33126C5 - CCL 1DS 8/13 5/5
 500. 31690JX1 1DS CIB 6/13 5/30
 500. 39709X00 1DS PMS
 500. 34370X00 5850601 main file
 500. 39046VX0 1DS CIB 2/13
 501. 39186R01 111441 090738 assign statement / count assig. mt
 500. 39772X00 file cont app mc
 635. 40259X00 FF due 7/13 no 4
 501. 39450X00 file Div. App 6/13
 500. 33574EX1 1DS 8/13 5/13
 501. 37977X00 file 3001 app mc /
 500. 33704VX2 file cont app mc /
 520. 37911X00 1DS PMS /

4/15
4/17/05
4/17/05

